

## REMARKS

### Material Properties

It is respectfully submitted to the Examiner that there is nothing inherent about using wood or plastic for a handle (many are made out of metal) and that even if such were the case, that does not mean that the material being used would be buoyant. Water has a density equal to about  $1.0 \text{ g/cm}^3$ . Ironwood, used in building projects due to its tremendous strength and resistance to rot, has a density of  $1.3 \text{ g/cm}^3$ . Thus, it will sink in water and is not, in fact, buoyant. Plastics, likewise, are not always buoyant. Ask any golfer, whose golf ball is constructed of a variety of plastics, what happens when they hit their ball into a pond. The ball sinks. Golf balls could be made to float but they are not because in the golf industry the coefficient of restitution (COR) needs to be high in order to get the golf ball to spring off of the clubface. Higher COR means faster ball movement and longer ball flights. Golf balls that float in water have materials that have a lower COR and therefore are not desirable. Here are two examples where the materials that the Examiner states have obvious characteristics in fact do not have those characteristics and it is a benefit to those using these materials that they do not have those characterizes.

Because of this, it is pure speculation and conjecture that one would be motivated toward a buoyant material. Cook never states that a buoyant material should be used and the Examiner can find no statement. If such a material is notoriously beneficial for the type of device that applicant has invented, why is that the Examiner cannot find a reference showing such. In each office action there has only been conjecture that buoyant materials are being used. Plastics and woods are shown but, as proven above, that does not mean that the materials are buoyant. The reason everyone uses these materials is not because they are buoyant but because they are easily shaped and molded. Only the applicant has cited buoyancy and the fact that the issue continues to resurface without one example of motivation is proof that the Examiner is using hindsight reconstruction. Here the Examiner has made two leaps. The first is that handles are generally made out of wood or plastic. The second is that the wood or plastic used is buoyant. With the references cited by the Examiner, the Examiner could not be

directed to such an obviousness finding because the references never mention these findings. Therefore, without applicant's claims being used as a template, the Examiner would not be able to form an obviousness argument.

5 **Paragraph 1 of the Office Action**

Claims 1, 2, 4, 6, 7 and 12 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Number 3,270,368 to Cook Sr. et al.

It is respectfully submitted that beyond the absurd argument that finger grips are feet, particularly when applicant defines a base and Cook defines a handle, applicant has defined the feet as being attached to the bottom surface. If one looks at the way in which the Examiner has defined Cook, the bottom surface would be the end of the handle and would not be adjacent to the top surface as Cook shows. Further, unlike applicant's device, the teeth would not be positioned beneath the cracking member but laterally spaced therefrom. The feet could do no supporting in that position and therefore are not feet at all but only finger grips as specifically defined by Cook. Therefore, the structure is not analogous.

With respect to claim 4, applicant has removed portions of that claim and entered it into claim 1. Cook shows an edge that orientated perpendicular to the top surface (as defined by the Examiner). Applicant has an upper edge for cracking crab, which is positioned opposite of the base, as must be the case since the bottom edge is attached to the base. This allows the entire base to act as a stabilizer for the downward pressure on the plate. Cook does not show this and again cannot be an analogous structure. For these reasons, it is believed that amended claim 1 and all claims depending from claim 1 are in condition for allowance.

25 The applicant respectfully requests withdrawal of the rejection.

**Paragraph 2 of the Office Action**

Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 5 is believed to be in allowable condition as stated above.

Claims 1, 4 and 5 have been combined and included into new claim 24. No new matter has been added. Based on the Examiner's comments, it is believed that new claim 24 and all claims depending therefrom are in condition for allowance.

5 **Paragraph 3 of the Office Action**

Claim 11 is allowed.


**CONCLUSION**

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In light of the foregoing amendments and remarks, early consideration and allowance of this application are most courteously solicited.

Respectfully submitted,

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